

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

v.

A.J. CONSTRUCTION, INC.,

Respondent.

CASE NO. OSH 2007-16

ORDER NO. 253

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board ("Board") on July 25, 2007, and attended by Robyn M. Kuwabe, Deputy Attorney General, for Complainant, and Elma Pacleb, Safety Coordinator, for Respondent, IT IS HEREBY ORDERED THAT:

1. In the Citation and Notification of Penalty issued on May 11, 2007 resulting from Inspection 310389937, Respondent was cited as follows:
 - A. Citation 1 Item 1: for violating 29 CFR 1926.501(b)(13) because "[t]wo construction employees were observed walking and working on a residential roof that was 16 feet above the ground. There was no type of fall protection system in place, thus, the employees were exposed to a potential fall hazard. A fall to a lower level exposes the employees to potential serious injuries or death."

The issue to be determined at trial is as follows:

- 1) Whether the penalty of \$10,000.00 is appropriate. If not, what is the proper penalty.
- B. Citation 2 Item 1: for violation 29 CFR 1926.503(a)(1) because "[t]wo construction workers were working on a roof of a residential structure that was 16 feet above the ground. One of the construction

workers did not receive certified training in fall hazards and protection. A fall to a lower level exposes the workers to potential serious injuries or death.”

The issues to be determined at trial are as follows:

- 1) Whether the characterization of the violation as “Serious” is appropriate, and, if not, what is the appropriate characterization.
- 2) Whether the penalty amount of \$1,000.00 is appropriate, and, if not, what is the appropriate amount for the penalty.
2. The deadline for the parties’ final naming of witnesses is **August 28, 2007**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with the witnesses’ addresses and brief summary of expected subject of their testimony, to the other party and to the Board by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **September 28, 2007**. All other discovery, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **October 30, 2007, at 9:30 a.m.**, in the Board’s hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.
5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, July 26, 2007.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chairman



EMORY J. SPRINGER, Member

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. A.J.
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SARAH/R. HIRAKAMI, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Robyn M. Kuwabe, Deputy Attorney General
Elma Pacleb